

SUPREME COURT, U. S.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1955
No. 529.

MARIE DE SYLVA,

Petitioner,

—against—

MARIE BALLENTINE, as Guardian of the Estate of
Stephen William Ballentine,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

**MOTION FOR LEAVE TO FILE BRIEF AS AN
AMICUS CURIAE**

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

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**MOTION OF AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS FOR LEAVE TO
FILE A BRIEF AS AN AMICUS CURIAE**

The American Society of Composers, Authors and Publishers respectfully petitions this Court for leave to file a brief as *amicus curiae* in this proceeding, pursuant to Rule 42 (3) of the rules of this Court, on the following grounds:

1. The American Society of Composers, Authors and Publishers (hereinafter referred to as the "Society") is an unincorporated association having its principal office at 575 Madison Avenue, New York City. Its membership consists of 3111 active writer members of whom 2492 are living composers and authors, and 619 are the widows, children or other successors of deceased composers and authors. In addition, the Society's active membership includes 769 publishers. A list of the Society's members is submitted herewith.

2. The Society is engaged in licensing users of music to perform publicly for profit the respective copyrighted musical compositions of its members throughout the United States.

3. Upon the death of a writer member leaving a widow and children, the Society must name a successor to the membership in order to obtain a grant of performing rights that will enable it to continue licensing the works of that member.

4. In determining who should be named as such successor, it is necessary to ascertain who will be entitled to obtain an extension of the copyright in the member's compositions for the renewal period.

5. This determination involves an interpretation of Tit. 17 U. S. C. § 24, which it is believed is the primary question now before this Court. That section provides in part that for the period after the first term of copyright,

"* * * the author of such work, if still living, or the widow, widower or children of the author, if the author be not living * * * shall be entitled to a renewal and extension of the copyright * * *." (Italics ours.)

6. Petitioner's husband, George G. De Sylva, was a writer member of the Society from January 8, 1920 to the time of his death in 1950.

7. Upon Mr. De Sylva's death, the Society named Petitioner, Marie De Sylva, as his successor, and has been paying to her the royalties which would have been payable to her husband had he been living. She, in turn, has granted to the Society the right to license performing rights in the musical compositions of her deceased husband.

8. In naming Petitioner as such successor, the Society followed its customary practice in cases where a writer member dies leaving a widow and children, that is, it regarded the widow as the person entitled to renewal

rights in those works which may be renewed after her husband's death and during her lifetime.

9. In the event of Petitioner's death it will be necessary to name a subsequent successor (after the death of the writer and his widow). In such cases, the Society has always regarded the children, if any, as entitled to renewal rights in those works which may be renewed after the widow's death and during the lifetimes of such children.

10. This interpretation on the part of the Society reflects the unanimous opinion of the twelve writer members and twelve publisher members who constitute its Board of Directors and represent the entire membership, and it has been the consistent opinion of its counsel.

11. The Society's interpretation is supported by leading text writers. The first and most authoritative statement is that of Richard C. De Wolf, who was an attorney in the Copyright Office when the 1909 Act was passed—having entered that office in 1907—and who ultimately became Acting Register of Copyrights in 1941.* Mr. De Wolf, writing in 1925, says in "*An Outline of Copyright Law*" at pp. 65-6 (italics ours):

"The renewal can only be obtained by the beneficiaries expressly named in the law, and by them in the order named, i. e., the person having the first right is the author, if living, at the end of the original term; *if he is not living, then the widow or widower, is entitled to renew; if there is no widow or widower, the children come in; in their absence, the executor of the author's will; and finally in the absence of all other beneficiaries and the intestacy of the author, the author's next of kin are entitled to renewal.*"

This is supported by other experienced authors cited by Petitioner. The statement of Mr. George Cary, principal Legal Advisor of the Copyright Office (relied on

* Mr. De Wolf's experience in the Copyright Office is summarized by his successor in the 48th Annual Report of the Register of Copyrights (1946) p. 1.

by respondent) that the contrary "has always been the position of the Copyright Office" is not borne out by the statements of his predecessors in the Copyright Office, Mr. De Wolf (*supra*) and Mr. Herbert Howell, in *The Copyright Law* (3d ed. 1952) p. 109. See also other treatises cited by Petitioner. Opinions of the Copyright Office as such, interpreting the Act should in any event be given little weight inasmuch as the furnishing of such opinions is the function of the Attorney General, as is evidenced by an opinion already rendered on this very clause. 28 Op. Atty. Gen. 162 (Feb. 3, 1910), reprinted in 17 Copyr. Off. Bull. 254 (1928).

12. It is the position of the Society—which it believes is not adequately set forth by Petitioner—that the phrase "widow, widower, or children", having been written in the disjunctive, cannot be changed to the conjunctive through an interpretation of the Copyright Office; that if there be any doubt about whether Congress intended to permit the children to assert renewal rights as against a non-consenting widow, that doubt should be resolved in favor of permitting an author to determine by deed or will whether his children *and* the widow shall be jointly entitled to renewal rights. The decision of the Court of Appeals would not even permit an author to designate the widow in preference to his children with respect to renewals during the widow's lifetime. There is no evidence in this case that the decedent ever expressed an intent to make the child a joint owner of renewal rights together with the widow.

13. When decedent made his will, he was, as a member of the Society, presumably familiar with the customary interpretation placed on 17 U. S. C. Section 24, as set forth above, and (though it does not affirmatively appear in this record) he must have planned his estate with that in mind.

14. It would be unfortunate, in a case such as this, to upset a well-established interpretation of the law, acquiesced in by practically all of the people (writers and

publishers) for whose benefit the copyright laws are enacted, upon as skimpy a record as this case presents. This case does not involve merely the rights of the two parties before the Court; it involves the right of authors to provide for the full enjoyment of their copyrights by their widows to the extent that such widows may survive the first term of copyright; and it involves the freedom of alienation of rights by the widow after the author's death so that it will not become necessary to appoint guardians for infant children whenever an application for renewal rights is made, or whenever rights are granted to third parties for the renewal period or any part of it. Consequently, it is submitted that if this Court should find the record inadequate for a consideration of some of the questions here presented, it should hold that the courts below erred in granting declaratory relief without a full trial of the issues.

15. It is respectfully submitted that the courts should insist upon a full consideration of all pertinent facts—including the interpretation placed on the statute by professional and commercial interests over a period of a whole generation—before making an interpretation of the law that will have as far reaching effect as in the case at bar.

16. The attorneys for Petitioner have consented to the filing of a brief *amicus curiae* by the Society, but the attorneys for respondent have withheld their consent.

17. I am duly authorized by the Board of Directors of the Society to make this motion.

WHEREFORE, it is respectfully prayed that an order be made and entered herein granting the within motion, and for such other and further relief as to this Court may seem just and proper in the premises.

Respectfully submitted,

HERMAN FINKELSTEIN
For American Society of Composers,
Authors and Publishers.

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AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

575 Madison Avenue
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Branch offices and local representatives exist to serve you in key cities of the Nation (see list herein). Please do not hesitate to call upon any of the Society's district or branch offices, or on the New York Office, for any information or assistance on questions involving copyright ownership.

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August 25th, 1955

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- Bowman, Brooks (dec'd)
- Bowman, Euday L. (dec'd)
- Boyer, Anita
- Boyle, George F. (dec'd)
- *Bradford, Bessie
- Bradford, James C. (dec'd)
- Bradford, John
- Bradford, Roark (dec'd)
- *Bradford, William
- Bradley, E. P.
- *Bradley, Edward
- Bradley, Scott
- Braggiotti, Mario
- Brainin, Jerome
- Brana (Hernan Hernandez) (Hernando)
- †Brandt, Carl
- Brandwynne, Nat
- Branen, Jeff T. (dec'd)
- Brannum, Hugh Roberts
- Branscombe, Gena
- Brant, Ira
- *Brashear, Charles
- Bratton, John W. (dec'd)
- †Brau, Alexis
- *Braunbach, Helena
- Breau, Lew (dec'd)
- Breck, Carrie Ellis (dec'd)
- Breen, May Singhi
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- Breeskin, Barnee
- †Bregman, Buddy
- *Brehm, Gunther
- Brennan, J. Keirn (dec'd)
- Brennan, James A.
- Brent, Earl K.
- *Brent, Paul
- Bresler, Jerome (Jerry)
- Breuder, W. Edward
- Breuer, Ernest
- *Briar, Edward Stockton
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- Briegel, George F.
- *Brill, Bill
- Bring, Lou
- *Brinkman, Paul
- Bristol, Margaret
- Britain, Radie
- Britt, Addy (dec'd)
- Britt, Elton
- *Britten, Roger
- †Broadhurst, Cecil
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- Brock, Virgil P.
- Brockman, James
- *Brockton, Lester
- †Broderick, Johnny
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- Brooks, Dudley A.
- *Brooks, Frederick Baxter
- *Brooks, George
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- Brooks, Harvey O.
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- Brown, Al W. (dec'd)
- Brown, Barnetta (dec'd)
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- *Brown, George
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- Brown, Lew
- †Brown, Louis Yule
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- Browne, Bradford
- *Browne, Ernest D.
- Browne, J. Lewis (dec'd)
- Browne, Raymond A. (dec'd)
- Browning, Mortimer (dec'd)
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- Buck, Carlton C.
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- *Burgein, C. S.
- Burk, Robert (dec'd)
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- Burris, James Henry (dec'd)
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- Burnnett, Earl (dec'd)
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- Burton, Nat (dec'd)
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- Burwell, Clifford R. (Cliff)
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- Bush, Louis F. (Lou)
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- Buys, Peter
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- Cacavas, John
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- †Cage, John
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- *Cantose, Phillip
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- Chasins, Abram
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- Cool, Harold (dec'd)
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- Cooper, Evelyné Love
- Cooper, Harvey Gilbert
- Cooper, Joe
- †Cooper, Kent
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- Costello, Bartley (dec'd)
- * Cotton, Hal
- Courage, A. M.
- Courtney, Alan
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- Cowan, Rubey
- Cowan, Stanley
- Cowles, Cecil
- * Cowley, John
- Cox, Lester M.
- Cox, Ralph (dec'd)
- * Coyle, John
- ‡ Craig, David
- Craig, Donald Michael
- Craig, Francis
- * Craig, Jimmy
- * Crane, Arthur B.
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- Crane, Jimmie
- * Crane, Paul
- Crawford, Jesse
- Crawford, Robert M.
- * Crawford, Stanley
- Creamer, Henry (dec'd)
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- * Creighton, Robert L.
- Creston, Paul
- * Creswell, John D.
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- Crooker, Earle T.
- Crosby, Bing
- Crosby, Bob
- * Crosby, Geo. H.
- * Cross, Daniel
- Cross, Douglass
- Crumit, Frank (dec'd)
- * Cummings, Margery S.
- Cummins, Bernie
- Cunliffe, Richard R.
- Cunningham, Paul
- Cuppett, Charles Harold
- Curbelo, Fausto
- Curran, Pearl G. (dec'd)
- Curtis, Billy (dec'd)
- Curtis, Loyal (dec'd)
- * Curtis, Mann
- * Curtis, Virginia
- ‡ Cusenza, Frank Jerome
- Cushing, Catherine C. (dec'd)
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- * Cutter, Bob
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- Czerwonky, Richard (dec'd)
- Dabney, Ford T.
- * D'Acosta, Leon
- ‡ Da Costa, Morton
- * D'Alba, Jose
- * Dale, Cecil
- ‡ Dale, Jimmie
- Dale, Jimmy
- * Dale, Marie
- * Dale, Norwood
- * Dale, Ruth
- Dallain, Helen
- * Daly, Bernard
- Daly, Joseph M.
- Dameron, Tadd
- Dammrosch, Walter (dec'd)
- D'Angelo, Carlo
- * D'Angelo, Salvatore J.
- Daniel, Eliot
- Daniels, Charles N. (dec'd)
- * Daniels, Elliott
- Daniels, Mabel
- * Daniels, Ruth
- * Danmark, Ribe
- Dant, Charles G.
- Danzig, Evelyn
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- Darcy, Jr., Thomas F.
- * D'Arese, Roscoe
- Darion, Joseph
- Darling, Denver
- * Darman, Arthur S.
- Darnel, Bill
- * Darnell, Shelby
- * Darsen, Frederic
- D'Artega, Alfonso
- * Daryl, Douglas
- Dash, Julian
- † da Silva, Owen Francis
- * Dave, Red River
- Davenport, Charles (Cow Cow)
- Davenport, Pembroke M. (Pem)
- David, Benj.
- * David, Don
- David, Hal (H. L.)
- David (Lee)
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- * Davidson, Ellsworth
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- * Davies, Bill
- Davies, Mary Carolyn
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- Davis, Frank
- Davis, Genevieve (dec'd)
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- * Davis, Jeffrey (Jeff)
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- Davis, Katherine K.
- Davis, Lou
- Davis, Mack (dec'd)
- * Davis, Norman
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- ‡ Dealy, James
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- *Dee, Bud
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- *Dees, Ashley
- De Filippi, Amedeo
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- De Francesco, L. E.
- †Deis, Carl
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- De Koven, Reginald (dec'd)
- De Lamarter, Eric (dec'd)
- De Langè, Edgar (dec'd)
- †Del Busto, Angel
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- De Leon, Robert
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- *Deley, Martin
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- Dempsey, James E. (dec'd)
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- *Dimes, Dinny
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- *Dobbs, Harry
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- *Doro, Grace
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- Fields, Arthur (dec'd)
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 Jones, Heywood S.
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 *Jones, Jocko
 *Jones, La Monte E.
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 *Jones, Tom
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- †Joy, Leonard W.
- *Juan y Dlorah
- †Junilla, Mary
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- Jurmann, Walter
- *Justin, Don

- Kabak, Milton
- *Kackley, Bob
- Kadison, Philip
- †Kagen, Sergius
- Kahal, Irving (dec'd)
- Kahan, Stanley J.
- Kahn, Donald
- Kahn, Grace Le Boy
- Kahn, Gus (dec'd)
- Kahn, Marvin Irving
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- *Kalani, Malie
- Kalman, Emmerich (dec'd)
- *Kalman, Erno
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- †Kane, Bernie
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- *Karoly, Gondov
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- Lemont, Cedric W. (dec'd)
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- *Leslie, Kermit
- *Leslie, Walter
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- *Levinson, Jerry
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- †Levy, Midge
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- *Lewis, Morgan
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- *Lighthill, Norman
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- Lilley, Joseph J.
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- *Lindeman, Edith
- †Lindemann, W. C. (Bily)
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- *Lindsay, Alan
- *Lindsay, Chas.
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- †Linsley, Horace
- Lippincott, David M.
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- Lippman, Sidney
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- Lisbona, Edward M.
- †Lissauer, Robert
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- *Lloyd, Lewellyn
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- *Locksley, Herbert
- *Lockwood, Torrence E.
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- Loehner-Beda, Fritz (dec'd)
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- Lorenz, Edmund S. (dec'd)
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- *Lounsbury, Walter
- †Love, Luther (Ludy)
- †Love, Margaret M.
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- *Lovell, Richard
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- *Lowe, Jules
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- †Lowe, Samuel Milton (Sammy)
- *Lowell, J. Edgar
- †Lowens, Irving
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- Luboff, Norman
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- *Lyons, Frank
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- MacDowell, Edward (dec'd)
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- *Mack, Cecil
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- *Moon, Dorothy Wilde
- *Moon, Jack
- Mooney, Harold
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- Morris, Melville
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- *Morse, Dorothy
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- *Morton, Ferd
- Morton, Ferdinand Joseph
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- *Morton, Jelly Roll
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- Mossman, Ted
- Mott, Harold
- *Motta, Bill
- Mottola, Anthony (Tony)
- Motzan, Otto (dec'd)
- *Moya
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- Mueller, Carl F.
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- *Mund, E. D.
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- Mundy, John
- Murchison, Kenneth M.
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- *Murdock, John
- *Murphy, Al C.
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- Murphy, Owen
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 Myers, Stan
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- Owens, Jack
- *Owens, Tommy
- *Ovett, Dayne

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- †Paganucci, Anthony Francis (dec'd)
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- *Paridon, Roxana
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- †Pineapple, Johnny (David Kaonohi)
- †Pingatore, Frank J.
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- *Potter, William
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- *Purcell, Gilbert
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- †Ramsay, E. S. (Gene)

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- *Raniss, W. R.
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- Rasch, Raymond P.
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- †Raskind, Philip
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- *Red River Dave
- Reddick, William
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- †Reed, Donald H.
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- Reed, Nancy
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- *Reginald, Lawrence
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- Reid, Don
- Reid, Reidy (dec'd)
- Reide, Marty
- Reif, Paul
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- Reisfeld, Bert
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- *Renba, Neerg
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- *Retlaw, S. C.
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- Silvers, Sid
- *Silvio, Alberto
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- Simon, Edward G. (dec'd)
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